



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Microtech, Inc.
File: B-225892
Date: April 29, 1987

DIGEST

Procuring agency properly rejected protester's low bid where the bid was grossly front-loaded with respect to first article pricing because an award to a bidder with grossly front-loaded first article prices would result in payment of funds to which the firm is not entitled with respect to the actual value of the first articles.

DECISION

Microtech, Inc. protests the rejection of its bid as nonresponsive under invitation for bids No. DAAB07-86-U645, issued by the United States Army Communications-Electronics Command (CECOM), Fort Monmouth, New Jersey, for 51 waveguides for the firefinder radar system. CECOM rejected Microtech's bid because it was determined to be materially unbalanced in price with respect to first article production units and testing.

We deny the protest.

The IFB was issued on May 19, 1986, with a requirement for first article testing and approval of four units selected at random from the first production lot. Bidders were required to submit separate prices for (1) the production quantities, (2) fabrication of the four first article units, (3) the first article test plan, and (4) the first article testing and test report.

At bid opening, on June 19, 1986, CECOM received three bids. Microtech was the second low bidder. The low bidder was determined to be nonresponsive and elected not to file for a certificate of competency (COC) with the Small Business Administration (SBA). Microtech was also found non-responsive. However, on October 1, 1986, the SBA issued Microtech a COC.

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On December 3, 1986, CECOM rejected Microtech's bid as nonresponsive for being materially unbalanced with respect to the first article pricing. Microtech's price was \$395 for each production unit and Microtech attributed \$14,000 of its total bid price of \$34,145 to first article pricing. The four first article units were priced at \$12,500 or \$3,125, each and the testing and test reports were priced at \$750 each.

The third low bidder was also found nonresponsive, and on December 12, 1986, CECOM canceled the solicitation. We find that CECOM properly rejected Microtech's bid as nonresponsive.

Initially, CECOM argues that the protest should be dismissed because Microtech did not extend its bid in writing when requested to do so. CECOM reports that on November 14, 1986, it requested Microtech to extend its bid, which was to expire on November 30, 1986, to December 31, 1986. CECOM states that Microtech orally agreed to extend its bid but has yet to provide written confirmation of its bid extension. However, Microtech's failure to confirm its extension in writing should not be viewed as a failure to extend its bid. When an agency requests an extension, it is the responsibility of a bidder that desires to extend its bid to communicate assent, either by insuring that an express extension is received by the agency, or through conduct from which the agency reasonably can infer the bidder's intention to extend the bid. Trojan Industries, Inc., B-220620, Feb. 10, 1986, 86-1 C.P.D. ¶ 143. Here, it is not in dispute that Microtech orally extended its bid and it states that it was not aware that CECOM requested it to do so in writing. Furthermore, Microtech has continued to pursue award of the contract by filing this protest. Therefore, we find that it is reasonable to infer that Microtech intended to extend its bid.

Microtech contends that its bid contained a clerical error, which was discovered on December 8, 1986, after its bid was determined to be nonresponsive. Microtech advises that the prices for the first article units, CLIN 0003AA, and the first article testing and test report, CLIN 0003AC, were inadvertently transposed in its bid and that it intended to bid \$12,500 for the testing and test report and \$750 for the 4 first article units. Microtech argues that the mistake was an obvious error, which the contracting officer should have permitted it to correct.

We have held that a bidding scheme which grossly front loads first article prices as a device to obtain unauthorized contract financing renders the bid materially unbalanced, per

se, so as to require its rejection. The rationale for this rule is that an award to a bidder submitting greatly enhanced first article prices will provide funds to that bidder to which it simply is not entitled if payment is to be measured on the basis of actual value received. Nebraska Aluminum Castings, Inc.--Reconsideration, B-222476.2, Sept. 23, 1986, 86-2 C.P.D. ¶ 335.

In assessing whether or not a first article price is egregiously front-loaded, this Office will look to see if there is a significant difference in the scope and nature of the work required to produce the first articles on the one hand and the production items on the other. Here, the solicitation requires the bidder to submit an initial sample identical to the production unit, for government approval, which after successful testing will constitute part of the first production lot. In our view, a significant difference in the scope and nature of the work does not exist where the first articles are simply initial samples identical to the production units, the sole purpose of which is to ensure that items conforming to the IFB's requirements will be furnished upon commencement of full production, and where the first articles, if not destroyed during testing, will be delivered as end items indistinguishable from the production units. Nebraska Aluminum Castings, Inc., B-222476, June 24, 1986, 86-1 C.P.D. ¶ 582; see also Riverport Industries, Inc.--Request for Reconsideration, 64 Comp. Gen. 441 (1985), 85-1 C.P.D. ¶ 364, aff'd B-218656.2, July 31, 1985, 85-2 C.P.D. ¶ 108.

Therefore, we find that CECOM clearly was justified in rejecting Microtech's bid because of the disproportionate value of its first article price, approximately 40 percent, and the value which would be received by the government upon acceptance of the first article units. Although Microtech contends that it made a mistake, which should have been detected by the contracting officer, because \$750 was too low a price for full qualification testing, CECOM reports in this regard that the other two bidders' prices for this requirement were \$980 and \$250. Thus, we see no evidence of a mistake on the face of Microtech's bid.

In any event, even if Microtech were allowed to shift its prices as it suggests, the bid still must be viewed as unbalanced because payment would be due for all first article requirements at the same time. Clause G2 of the IFB entitled "Payment Procedures For First Article" provides that payment for the first article (CLIN 0003AA) will be made when the contractor's testing and test report have been approved and

accepted by the government. While the clause does not specifically state when payment will be made for the test plan and the testing and test report items (CLINs 0003AB and 0003AC), it is clear that payment for the entire first article requirement is due upon approval and acceptance of the first article. In the absence of any other provision in the contract concerning payment for first article, it would be unreasonable to conclude otherwise. Therefore, the bid is equally unbalanced whether or not the \$12,500 is attributed to the first article or the testing and test report because, in light of the grossly front-loaded first article costs, the government would be providing funds to Microtech in advance of receiving actual value. See Nebraske Aluminum Castings, Inc.--Reconsideration, B-222476.2, supra, 86-2 C.P.D. ¶ 335 at 1. Accordingly, we find that the bid properly was rejected.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel